

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

House Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

CHAPTER 116

HOUSE BILL 2423

AN ACT

AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 48; RELATING
TO STATE CONTRACTS WITH PRIVATE ATTORNEYS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, Arizona Revised Statutes, is amended by adding chapter 48, to read:

CHAPTER 48

PRIVATE ATTORNEY RETENTION

ARTICLE 1. GENERAL PROVISIONS

41-4801. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "GOVERNMENT ATTORNEY" MEANS AN ATTORNEY EMPLOYED BY THIS STATE AS A STAFF ATTORNEY IN THE ATTORNEY GENERAL'S OFFICE.

2. "PRIVATE ATTORNEY" MEANS ANY PRIVATE ATTORNEY OR LAW FIRM.

3. "STATE" MEANS THIS STATE, INCLUDING STATE OFFICERS, AGENCIES, DEPARTMENTS, BOARDS AND COMMISSIONS AND UNITS OF ORGANIZATION, HOWEVER DESIGNATED, OF THE EXECUTIVE BRANCH OF THIS STATE, AND ANY OF ITS AGENTS, BUT DOES NOT INCLUDE THOSE AGENCIES AS PROVIDED IN SECTION 41-192, SUBSECTION E.

41-4802. Written determination of necessity to enter into contingency fee contract; procurement

A. THIS STATE MAY NOT ENTER INTO A CONTINGENCY FEE CONTRACT WITH A PRIVATE ATTORNEY UNLESS THE ATTORNEY GENERAL MAKES A WRITTEN DETERMINATION BEFORE ENTERING INTO SUCH A CONTRACT THAT CONTINGENCY FEE REPRESENTATION IS BOTH COST EFFECTIVE AND IN THE PUBLIC INTEREST. THE ATTORNEY GENERAL'S WRITTEN DETERMINATION SHALL INCLUDE SPECIFIC FINDINGS FOR EACH OF THE FOLLOWING FACTORS:

1. WHETHER THERE EXIST SUFFICIENT AND APPROPRIATE LEGAL AND FINANCIAL RESOURCES WITHIN THE ATTORNEY GENERAL'S OFFICE TO HANDLE THE MATTER.

2. THE TIME AND LABOR REQUIRED TO PERFORM THE TASK, THE NOVELTY, COMPLEXITY AND DIFFICULTY OF THE QUESTIONS INVOLVED AND THE SKILL NECESSARY TO PERFORM THE ATTORNEY SERVICES PROPERLY.

3. THE GEOGRAPHIC AREA WHERE THE ATTORNEY SERVICES ARE TO BE PROVIDED.

4. THE AMOUNT OF EXPERIENCE DESIRED FOR THE PARTICULAR KIND OF ATTORNEY SERVICES TO BE PROVIDED AND THE NATURE OF THE PRIVATE ATTORNEY'S EXPERIENCE WITH SIMILAR ISSUES OR CASES.

B. IF THE ATTORNEY GENERAL MAKES THE DETERMINATION PROVIDED IN SUBSECTION A, THE ATTORNEY GENERAL SHALL REQUEST PROPOSALS FROM PRIVATE ATTORNEYS TO REPRESENT THE DEPARTMENT ON A CONTINGENCY FEE BASIS, UNLESS THE ATTORNEY GENERAL DETERMINES THAT REQUESTING PROPOSALS IS NOT FEASIBLE UNDER THE CIRCUMSTANCES AND PRESCRIBES THE BASIS FOR THIS DETERMINATION IN WRITING. IF THE ATTORNEY GENERAL MAKES SUCH A DETERMINATION, THE CONTRACT IS NOT SUBJECT TO CHAPTER 23 OF THIS TITLE.

41-4803. Contingent fee limitation; requirements; notices

A. THIS STATE MAY NOT ENTER INTO A CONTINGENCY FEE CONTRACT THAT PROVIDES FOR THE PRIVATE ATTORNEY TO RECEIVE AN AGGREGATE CONTINGENCY FEE IN EXCESS OF:

1. TWENTY-FIVE PER CENT OF ANY RECOVERY OF LESS THAN TEN MILLION DOLLARS.

1 2. TWENTY PER CENT OF ANY RECOVERY OF TEN MILLION DOLLARS OR MORE BUT
2 LESS THAN FIFTEEN MILLION DOLLARS.

3 3. FIFTEEN PER CENT OF ANY RECOVERY OF FIFTEEN MILLION DOLLARS OR MORE
4 BUT LESS THAN TWENTY MILLION DOLLARS.

5 4. TEN PER CENT OF ANY RECOVERY OF TWENTY MILLION DOLLARS OR MORE BUT
6 LESS THAN TWENTY-FIVE MILLION DOLLARS.

7 5. FIVE PER CENT OF ANY RECOVERY OF TWENTY-FIVE MILLION DOLLARS OR
8 MORE.

9 B. THE AGGREGATE CONTINGENCY FEE SHALL NOT EXCEED FIFTY MILLION
10 DOLLARS, EXCEPT FOR REASONABLE COSTS AND EXPENSES AND REGARDLESS OF THE
11 NUMBER OF LAWSUITS FILED OR THE NUMBER OF PRIVATE ATTORNEYS RETAINED TO
12 ACHIEVE THE RECOVERY.

13 C. THE STATE SHALL NOT ENTER INTO A CONTRACT FOR CONTINGENCY FEE
14 ATTORNEY SERVICES UNLESS THE FOLLOWING REQUIREMENTS ARE MET THROUGHOUT THE
15 CONTRACT PERIOD AND ANY EXTENSIONS OF THE CONTRACT:

16 1. A GOVERNMENT ATTORNEY RETAINS COMPLETE CONTROL OVER THE COURSE AND
17 CONDUCT OF THE CASE.

18 2. A GOVERNMENT ATTORNEY WITH SUPERVISORY AUTHORITY IS PERSONALLY
19 INVOLVED IN OVERSEEING THE LITIGATION.

20 3. A GOVERNMENT ATTORNEY RETAINS VETO POWER OVER ANY DECISIONS MADE BY
21 THE PRIVATE ATTORNEY.

22 4. ANY DEFENDANT THAT IS THE SUBJECT OF THE LITIGATION MAY CONTACT THE
23 LEAD GOVERNMENT ATTORNEY DIRECTLY WITHOUT HAVING TO CONFER WITH THE PRIVATE
24 ATTORNEY.

25 5. A GOVERNMENT ATTORNEY WITH SUPERVISORY AUTHORITY FOR THE CASE
26 ATTENDS ALL SETTLEMENT CONFERENCES.

27 6. DECISIONS REGARDING SETTLEMENT OF THE CASE ARE RESERVED EXCLUSIVELY
28 TO THE DISCRETION OF THE GOVERNMENT ATTORNEY AND THIS STATE.

29 D. THE ATTORNEY GENERAL SHALL DEVELOP A STANDARD ADDENDUM TO EVERY
30 CONTRACT FOR CONTINGENT FEE ATTORNEY SERVICES THAT THE ATTORNEY GENERAL MUST
31 USE IN ALL CASES, DESCRIBING IN DETAIL WHAT IS EXPECTED OF BOTH THE
32 CONTRACTED PRIVATE ATTORNEY AND THIS STATE, INCLUDING THE REQUIREMENTS
33 PRESCRIBED IN SUBSECTION C.

34 E. THE ATTORNEY GENERAL SHALL POST COPIES OF ANY EXECUTED CONTINGENCY
35 FEE CONTRACT AND THE ATTORNEY GENERAL'S WRITTEN DETERMINATION TO ENTER INTO A
36 CONTINGENCY FEE CONTRACT WITH THE PRIVATE ATTORNEY ON THE ATTORNEY GENERAL'S
37 WEBSITE FOR PUBLIC INSPECTION WITHIN FIVE BUSINESS DAYS AFTER THE DATE THE
38 CONTRACT IS EXECUTED WHICH SHALL REMAIN POSTED ON THE WEBSITE FOR THE
39 DURATION OF THE CONTINGENCY FEE CONTRACT, INCLUDING ANY EXTENSIONS OR
40 AMENDMENTS OF THE CONTRACT. THE ATTORNEY GENERAL SHALL POST ANY PAYMENT OF
41 CONTINGENCY FEES ON THE ATTORNEY GENERAL'S WEBSITE WITHIN FIFTEEN DAYS AFTER
42 THE PAYMENT OF THE CONTINGENCY FEES TO THE PRIVATE ATTORNEY WHICH SHALL
43 REMAIN POSTED ON THE WEBSITE FOR AT LEAST THREE HUNDRED SIXTY-FIVE DAYS
44 THEREAFTER.

1 F. ANY PRIVATE ATTORNEY UNDER CONTRACT TO PROVIDE SERVICES TO THIS
2 STATE ON A CONTINGENCY FEE BASIS, FROM THE INCEPTION OF THE CONTRACT UNTIL AT
3 LEAST FOUR YEARS AFTER THE CONTRACT EXPIRES OR IS TERMINATED, SHALL MAINTAIN
4 DETAILED CURRENT RECORDS, INCLUDING DOCUMENTATION OF ALL EXPENSES,
5 DISBURSEMENTS, CHARGES, CREDITS, UNDERLYING RECEIPTS AND INVOICES AND OTHER
6 FINANCIAL TRANSACTIONS THAT CONCERN THE PROVISION OF THE ATTORNEY SERVICES.
7 THE PRIVATE ATTORNEY SHALL MAKE ALL THE RECORDS AVAILABLE FOR INSPECTION AND
8 COPYING ON REQUEST PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2. THE PRIVATE
9 ATTORNEY SHALL MAINTAIN DETAILED CONTEMPORANEOUS TIME RECORDS FOR THE
10 ATTORNEYS AND PARALEGALS WORKING ON THE MATTER IN INCREMENTS OF NO GREATER
11 THAN ONE TENTH OF ONE HOUR AND SHALL PROMPTLY PROVIDE THESE RECORDS TO THE
12 ATTORNEY GENERAL ON REQUEST.

13 41-4804. Reports

14 BY FEBRUARY 1 OF EACH YEAR, THE ATTORNEY GENERAL SHALL SUBMIT A REPORT
15 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
16 REPRESENTATIVES AND FORWARD A COPY OF THE REPORT TO THE SECRETARY OF STATE
17 THAT DESCRIBES THE USE OF CONTINGENCY FEE CONTRACTS WITH PRIVATE ATTORNEYS IN
18 THE PRECEDING CALENDAR YEAR. AT A MINIMUM THE REPORT SHALL:

19 1. IDENTIFY ALL NEW CONTINGENCY FEE CONTRACTS ENTERED INTO DURING THE
20 YEAR AND ALL PREVIOUSLY EXECUTED CONTINGENCY FEE CONTRACTS THAT REMAIN
21 CURRENT DURING ANY PART OF THE YEAR.

22 2. DESCRIBE FOR EACH CONTRACT:

23 (a) THE NAME OF THE PRIVATE ATTORNEY WITH WHOM THE DEPARTMENT HAS
24 CONTRACTED, INCLUDING THE NAME OF THE ATTORNEY'S LAW FIRM.

25 (b) THE NATURE AND STATUS OF THE LEGAL MATTER.

26 (c) THE NAME OF THE PARTIES TO THE LEGAL MATTER.

27 (d) THE AMOUNT OF ANY RECOVERY.

28 (e) THE AMOUNT OF ANY CONTINGENCY FEE PAID.

29 3. INCLUDE COPIES OF ANY WRITTEN DETERMINATIONS MADE PURSUANT TO
30 SECTION 41-4802 DURING THE YEAR.

31 41-4805. No expansion of authority

32 THIS CHAPTER DOES NOT EXPAND THE AUTHORITY OF ANY STATE AGENCY OR STATE
33 EMPLOYEE TO ENTER INTO CONTRACTS WHERE NO AUTHORITY PREVIOUSLY EXISTED.

APPROVED BY THE GOVERNOR APRIL 14, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2011.

Passed the House March 3, 2011

by the following vote: 44 Ayes,

13 Nays, 3 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate April 7, 2011

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

11 day of April, 2011

at 2:40 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 14th day of

April

at 2:45 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 14th day of April, 2011

at 5:07 o'clock P. M.

[Signature]
Secretary of State

H.B. 2423